IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 3285 of 2004

Between:

1 B.Arun Kumar, S/o.J.J.Rao, R/o.72, Mahaveer Center, Sector 17, Vashi, Navi Mumbai
2 B.Jaya Kalyani, W/o.B.Arun Kumar, R/o.72, Mahaveer Center Sector 17, Vashi, Navi Mumbai

..... PETITIONERS

AND

1 The Sub-Registrar, Ghatkesar, R.R.District.
2 Mohd.Sikander, S/o.Md.Hameed, R/o.12-13-484, Street No.1, Tarnaka, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to pass an order or orders or direction mainly in nature of writ of Mandamus by declaring the inaction of the respondent No.1 in not considering the representation of the petitioner and insisting the petitioners to get orders against him from competent court as contrary to law and violative of principles of natural justice, and to direct the respondent No.1 i.e. Sub-Registrar, Ghatkesar, R.R.District not to entertain any conveyance deed executed by the 2nd respondent or his men or purchasers in respect of property in sy.Nos. 21 and 22(part) admeasuring Acs.16.07 guntas situated at Chengicherla Village, Ghatkesar Mandal, Ranga Reddy District by following the judgment and decree of honourable court of Principal Junior Civil Judge, East and North, RR District in O.S.No. 30/97 dated 25.1.2002.

Counsel for the Petitioners:SMT.A.ANASUYA

Counsel for Respondent No.1: GP FOR REVENUE

The Court, at the stage of admission, made the following :

ORDER

Petitioners claim to be owners of the land to an extent of Ac.16.07 guntas in Sy.Nos.21 and 22 (part) of Chengicherla Village, Ghatkesar mandal, Ranga Reddy District. Petitioners filed O.S.No.30 of 1997 on the file of Principal Junior Civil Judge, East and North, R.R. District for perpetual injunction against the second respondent herein when he interfered with the property in question on the basis of some GPA executed by some third persons. The said suit was decreed on 25.1.2002 upholding the ownership and possession of the petitioners. Against the same the second respondent preferred an appeal in A.S.No.35 of 2002 on the file of the Additional District Judge, Ranga Reddy District along with an application in I.A.No.639 of 2002 to stay the operation of the judgment of the trial Court dated 25.1.2002 and the said application was dismissed on 23.4.2002. While so, the second respondent by entering into some transaction with third parties with regard to the suit schedule property and without disclosing the pendency of the civil litigation, is trying to create third party interest. In view of the same, the petitioners filed a petition before the first respondent-Sub-Registrar, Ghatkesar along with a copy of the judgment of the trial Court dated 25.1.2002 requesting him not to register any sale deed submitted by the second respondent. The Sub-Registrar through his letter dated 28.1.2004 informed the petitioners that he being a Registering Officer, cannot refuse registration of a document which otherwise satisfies the requirements of law and on the grounds urged by the petitioners, the registration cannot be rejected. However, he informed the petitioners that they can seek a direction from a competent Court of law restraining him from registering the document. Questioning the same the present writ petition is filed contending that under the provisions of Indian Registration Act, 1908 (for short 'the Act') the registering authority is under obligation to verify as to whether the persons executing the document presented for registration have proper title to the property covered by the document.

First respondent filed a counter affidavit stating that he being the registering authority

has to entertain and admit the documents whenever they are presented for registration if they are in accordance with the provisions of the Registration Act, 1908 and Indian Stamp Act, 1899. It is stated that the first respondent, being a registering authority, neither has jurisdiction nor authority to enquire into the validity of a document presented for registration and the question of title of the executant. It is stated that under Rule 58 of the A.P. Rules framed under the Registration Act, the registering authority is barred from conducting any enquiry with regard to right and title of the executant and this Court in W.P.No.21837 of 2002 by order dated 13.11.2002 reiterated the same and on appeal it was upheld by a Division Bench of this Court in W.A.No.69 of 2003 dated 6.3.2003.

Heard the learned counsel for the petitioners and learned Government Pleader for Revenue.

Learned counsel for the petitioners contends that once there is a decree by a competent Civil Court determining the rights of the petitioners with regard to the property in question, any document presented in respect of the same by the second respondent for registration is a nullity and presentation of a document for registration by a person not duly authorized in accordance with Sections 32 and 33 of the Act, does not authorize the registering officer to register the document. In support of her contention she relied upon **JAMBU PRASAD V NAWAB AFTAB ALI KHAN**, **MADHU MOLLA V BABONSA KARIKAR** and **VINAYAK V PARSAPPA.**

In **Jambu Prasad's** case (one supra) the trial Court dismissed two suits, which were based on mortgage deeds, on the ground that the mortgage deeds had not been validly registered and consequently could not affect the immoveable property which was the subject matter of the mortgages. On appeal, the High Court of Allahabad dismissed one appeal against the suit which was based on the mortgage of 1886 and allowed one appeal against the suit which was based on the mortgage of 1882. On further appeal, the Privy Council held that the object of Sections 32,33,34 and 35 of Registration Act (III of 1877) was to make it difficult for persons to commit fraud by means of registration under the Act. It was further held that a Registrar or Sub-Registrar under Act III of 1877 has no jurisdiction to register a document unless he is moved to do so by a person who has executed or claims under it, or by the representative or assignee, duly authorized by a power of attorney executed and authenticated in the manner prescribed in Section 33 of the Act and it is obvious that executants of deeds who attend before a Registrar or Sub-Registrar merely to admit

that they have executed it cannot be treated, for the purpose of Section 32 of Act III of 1877, as presenting the deed for registration. They, no doubt, would be assenting to the registration, but that would not be sufficient to give the Registrar jurisdiction. In view of the same, the Privy Council further held that it is the duty of the Courts in India not to allow the imperative Provisions of the Act to be defeated when it is proved that an agent who presented a document for registration had not been duly authorized in the manner prescribed by the Act to present it.

I n **Madhu Molla's** case (two supra) the suit filed by the plaintiffs was for a declaration of their title to a share in certain lands comprised in two jamas, and for partition. As regards an eight annas share of the lands in the suit, the plaintiffs therein traced their title through a kabala which was granted to their vendors by one Panchu. That kabala was executed in 1896 by the said Panchu, who died shortly thereafterafter; and, on his death, the same was presented for registration by his widow. The said Panchu left behind him his widow, a brother, a sister, and mother, and each of these four persons as the heirs of Panchu would be entitled to a share of his estate. The kabala having been presented by the widow was registered. The Calcutta High Court while rejecting the contention raised by the appellant-defendant therein that the document, which was presented for registration was not properly presented, and considering the object of Section 32 of Registration Act, 1908 held that the presentation of the kabala for registration by the widow of Panchu is in conformity with the requirements of Section 32 of the Registration Act.

The facts in those cases are different from that of the facts in the case on hand. Similarly the decision in V**inayak's** case (three supra) is also not applicable to the facts of the present case. Rule 58 of the A.P. State Rules framed under the Act reads as hereunder:

> "58. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:
>
> (a) that the parties appearing or about to appear before him are not the persons they profess to be'
>
> (b) That the document is forged;
>
> (c) that the person appearing as a representative assign or agent, has no right to

appear in that capacity;

(d) that the executing party is not really dead as alleged by the party applying for registration; or

(e) that the executing party is a minor or an idiot or a lunatic."

From the above it is clear that the registering authority is prohibited from enquiring into the aspect of title, while registering and admitting a document for registration. When similar issue fell for consideration in W.P.No.21837 of 2002, this Court by order dated 13.11.2002 dismissed the said writ petition on the ground that the Registering authority cannot enquire into the question of title of the presentor of the document, and the same was upheld by a Division Bench of this Court in W.A.No.69 of 2003 dated 6.3.2003. This Court in **PROPERTY ASSOCIATION OF BAPTIST CHURCHES V SUB-REGISTRAR, JANGAON, WARANGAL** while considering Rule 58 of the Rules, observed as hereunder:

"The limited power of the registering officer to enquire into objections that the executing party had no right to execute document get extinguished the moment the document is registered."

In view of the above, the submission of the learned counsel for the petitioners that the first respondent cannot entertain any document submitted by the second respondent for registering the same, cannot be countenanced for the reason that the duty of the first respondent is to see whether the document presented before him is in accordance with the provisions of the Registration Act and is stamped sufficiently as per the Indian Stamp Act and the executant was identified by persons and produced the necessary link documents along with the sale deeds or not. When the document satisfies the requirement of law, the first respondent is bound to register the same, but he cannot decide the right of the executant for such execution of the document. However, when an objection is taken by any person for such registration on any of the grounds specified in Rule 58, the Registering authority is bound to consider the same. However, as seen from the record, on an objection took by the petitioners, theauthority considered and rejected the same. The writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

_____

A. GOPAL REDDY. J.

27th October, 2004

tsr.

To

1 The Sub-Registrar, Ghatkesar, R.R.District.
2 Two CCs to Government Pleader for Revenue, High Court Buildings, Hyderabad. (OUT).

3 Two CD copies.